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DATE
20 May 1989

TO: DD/Planning & Policy

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ROOM NO.

BUILDING

3S01

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REMARKS:

Due to a mistake in the listing of
addresses, I am sending this again to:
DD/Planning & Policy Office/ICS
Executive Secretary/COMIREX/ICS
Sorry for the inconvenience.

FROM:

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ROOM NO.

BUILDING

EXTENSION

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ICES FORM 36-8

(47)

1988 0 - 207-558

26 May 1989
OCA 1736-89

MEMORANDUM FOR: Chief, Intelligence Community Affairs/OGC
Chief, Logistics & Procurement Law Division/
OGC
DD/Planning & Policy Office/COMIREX/ICS

FROM:



Legislation Division
Office of Congressional Affairs

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SUBJECT: Space Transportation Services Purchase Act of
1989 (Discussion Draft)

1. Attached for your review and comment is a copy of the above-captioned draft bill. It aims to promote the burgeoning commercial space transportation industry with minimal Federal support.

2. The bill requires the Government to purchase space transportation services from the private sector unless, among other reasons, the national security dictates otherwise, as determined by the Secretary of Defense. The Government may only procure space transportation vehicles for the same reasons. The bidding for these contracts is to be public, unless "unreasonably disadvantageous" with respect to cost, reliability or mission compatibility. Contract disputes would be resolved by a Space Transportation Services Appeals Board, whose findings will bind the Government.

3. Should you determine that these provisions or others pose problems for the Agency, I ask that you telephone me on  as soon as possible, but no later than 31 May 1989. The Office of Management and Budget is awaiting our views.

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Attachment

OCA 1736-89

**SUBJECT: Space Transportation Services Purchase Act of 1989
(Discussion Draft)**

OCA/LEG [redacted] (26 May 89)

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Distribution:

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[DISCUSSION DRAFT]
MAY 19, 1989

101ST CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. PACKARD introduced the following bill; which was referred to
the Committee on _____

A BILL

To encourage the development and full capability of a competitive
United States space transportation industry by requiring the
Federal Government to contract for commercially provided
space transportation services with certain exceptions.

Be it enacted by the Senate and House of Representatives
2 of the United States of America in Congress assembled,

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1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Space Transportation
3 Services Purchase Act of 1989".

4 SEC. 2. FINDINGS.

5 The Congress finds that--

6 (1) the United States commercial space transportation
7 industry is an essential component of national efforts to
8 assure access to space for government and commercial
9 users;

10 (2) the Federal Government should encourage,
11 facilitate, and promote the United States commercial
12 space transportation industry, including the development
13 of commercial launch facilities, in order to ensure
14 United States economic preeminence in space, and should
15 do so with minimum Federal subsidy;

16 (3) the United States commercial space transportation
17 industry must be competitive in the international
18 marketplace;

19 (4) commercial vehicles, not government vehicles,
20 will be the most effective means to challenge foreign
21 competition;

22 (5) the requirements of government specifications
23 relating to vehicle design, construction, and operation
24 impose an unwarranted burden on the engineering freedom
25 necessary to achieve substantial cost savings in the

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1 provision of space transportation services;

2 (6) the procurement of space transportation services
3 by the Federal Government rather than the procurement of
4 space transportation vehicles would result in significant
5 cost savings to the Federal Government;

6 (7) the procurement of space transportation services
7 by the Federal Government in a commercially reasonable
8 manner would result in significant cost savings to the
9 commercial space transportation industry and to the
10 Federal Government;

11 (8) it is the general policy of the Federal
12 Government to purchase needed services from the private
13 sector whenever possible, and this policy should include
14 space transportation services as well;

15 (9) application of similar policy by foreign
16 governments has greatly assisted their respective space
17 transportation industries; and

18 (10) predictable access to Federal Government space
19 transportation markets would encourage continuing United
20 States private sector investment in space and related
21 activities.

22 SEC. 3. DEFINITIONS.

23 For the purposes of this Act--

24 (1) the term "commercial provider" means any person
25 providing space transportation services, but does not

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1 include the Federal Government;

2 (2) the term "outer space" means any area more than
3 70 kilometers above the mean sea level of the Earth;

4 (3) the term "payload" means an object which a
5 person undertakes to transport to, from, or within outer
6 space by means of a space transportation vehicle, and
7 includes components of the space transportation vehicle
8 specifically designed or adapted for that object;

9 (4) the term "Secretary" means the Secretary of
10 Transportation;

11 (5) the term "space transportation services" means
12 services provided in connection with the transportation
13 of payload to, from, or within outer space;

14 (6) the term "space transportation vehicle" means
15 any vehicle constructed for the purpose of launching in,
16 or transporting a payload to, from, or within, outer
17 space, and includes any component of such vehicle not
18 specifically designed or adapted for a payload; and

19 (7) the term "United States person" means--

20 (A) any individual who is a national of the
21 United States; or

22 (B) any corporation, partnership, joint venture,
23 association, or other entity, if the controlling
24 interest (as defined by the Secretary in regulations)
25 in such entity is held by individuals who are

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1 nationals of the United States.

2 **SEC. 4. REQUIREMENT TO PROCURE COMMERCIAL SPACE**

3 **TRANSPORTATION SERVICES.**

4 (a) **IN GENERAL.**--Except as otherwise provided in this
5 section, the Federal Government shall purchase space
6 transportation services from commercial providers whenever
7 such services are required in the course of its activities.

8 (b) **EXCEPTIONS.**--The Federal Government shall not be
9 required to purchase space transportation services as
10 provided in subsection (a) if, on a case by case basis--

11 (1) the Secretary of Defense certifies to the
12 National Space Council that national security reasons
13 require otherwise;

14 (2) the Administrator of the National Aeronautics and
15 Space Administration certifies to the National Space
16 Council that the unique capabilities of the space shuttle
17 are required; or

18 (3) the National Space Council finds that the space
19 transportation services required are unavailable from
20 commercial providers.

21 **(c) FEDERAL GOVERNMENT SPACE TRANSPORTATION**

22 **VEHICLES.**--Space transportation vehicles shall be acquired,
23 owned, maintained, or operated by the Federal Government
24 only--

25 (1) as required for purposes described in subsection

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1 (b); or

2 (2) by the National Aeronautics and Space
3 Administration for conducting research and development
4 on, and testing of, space transportation technology.

5 (d) PHASE-IN PERIOD.--Subsections (a) and (c) shall not
6 apply to space transportation services and space
7 transportation vehicles purchased by the Federal Government
8 before the date of enactment of this Act. Any such space
9 transportation vehicles purchased by the Federal Government
10 before the date of enactment of this Act may be sold to
11 commercial providers if such sale would result in a more
12 economical acquisition by the Federal Government of space
13 transportation services.

14 (e) HISTORICAL PURPOSES.--This Act shall not be
15 interpreted to prohibit the Federal Government from
16 acquiring, owning, or maintaining space transportation
17 vehicles solely for historical display purposes.

18 SEC. 5. PROVISION OF SPACE TRANSPORTATION SERVICES.

19 (a) COMPETITIVE BIDDING.--(1) Except as provided in
20 paragraph (2), contracts to provide space transportation
21 services to the Federal Government under section 4 shall be
22 awarded in a process of full, fair, and open competitive
23 bidding among United States persons.

24 (2) Paragraph (1) shall not apply if to award a contract
25 under its provisions would be unreasonably disadvantageous

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1 with respect to cost, reliability, or mission compatibility.

2 (3) Submission of cost data either for the purposes of
3 supporting the bid, or for the fulfillment of the contract,
4 shall not be required of the bidders.

5 (b) SPECIFICATION SYSTEMS.--Conformance with the Military
6 Specification (Milspec) system or NASA specification systems
7 with respect to the design, construction, or operation of
8 equipment used in providing space transportation services to
9 the Federal Government shall not be a requirement for a
10 commercial provider bidding to provide such services, except
11 with respect to emergency flight termination (range safety)
12 equipment when flights are made from launch sites owned by
13 the Federal Government.

14 (c) DISPUTES.--The Secretary, in consultation with the
15 National Space Council, shall establish a Space
16 Transportation Services Appeals Board (hereafter in this
17 subsection referred to as the "Board"), to consist of the
18 Secretary or his designee, the Secretary of Commerce or his
19 designee, one representative of the National Space Council,
20 and appropriate representatives of industry and various
21 government agencies having expertise in the technical and
22 business aspects of disputes brought before the Board. The
23 Secretary or his designee shall serve as chairman of the
24 Board. The Secretary shall provide necessary funding and
25 clerical support to the Board. Any dispute regarding

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1 interpretation of space transportation service contracts
2 between commercial providers and the Federal Government shall
3 be resolved by the Board. The Board shall also adjudicate
4 disputes between commercial providers and the Federal
5 Government regarding agreements for the provision of launch
6 property and services provided under terms of the Commercial
7 Space Launch Act and other laws or executive orders. Findings
8 of the Board shall be binding on the Federal Government, but
9 commercial providers may seek appropriate relief through the
10 courts.

11 **SEC. 6. OTHER ACTIVITIES OF THE FEDERAL GOVERNMENT.**

12 (a) **COMMERCIAL PAYLOADS ON THE SPACE SHUTTLE.--**No
13 commercial payloads may be accepted for launch on the space
14 shuttle with the sole exception of payloads which the
15 Secretary determines require unique capabilities of the
16 shuttle.

17 (b) **GRANTS.--**Grants of funds by the Federal Government to
18 United States persons for activities which use space
19 transportation services shall carry as a condition of grant
20 the requirement to purchase such services through a process
21 of full, fair, and open competition, giving preference to
22 commercial providers who are United States persons. In the
23 case of each such grant, the grantee shall certify to the
24 Secretary that such a full, fair, and open competition led to
25 the purchase of those services. This subsection shall not

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1 apply to grants made before the date of enactment of this
2 Act.

3 (c) INTERNATIONAL EXPENDITURES.--Expenditures of funds by
4 the Federal Government for the purpose of supporting
5 international cooperative activities or international
6 organizations utilizing space transportation services shall
7 be made with the condition that all commercial providers who
8 are United States persons are given a fair and equitable
9 opportunity to compete for provision of those space
10 transportation services. In the case of each such
11 expenditure, the head of the agency making the expenditure
12 shall certify to the National Space Council that such
13 opportunities exist before the release of funds for such
14 purposes. This subsection shall not apply to expenditures to
15 be made under agreements reached before the date of enactment
16 of this Act.

17 (d) STUDIES.--Expenditures of funds by the United States
18 for studies of means of meeting future space transportation
19 services requirements of the Federal Government shall be made
20 with the condition that due attention will be given to the
21 potential of commercial providers to meet such requirements,
22 and to the need to avoid deterring private space investment
23 by any future government action affecting space
24 transportation. In order to facilitate such attention, the
25 head of the agency conducting the study shall consult with
26 the National Space Council.